

CIRCULAR No. 528.

**SOLDIERS' ADDITIONAL RIGHTS UNDER SECTIONS 2306 AND  
2307, REVISED STATUTES.**

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
*Washington, D. C., February 16, 1917.*

REGISTERS AND RECEIVERS,  
*United States Land Offices.*

SIRS: Under date of February 15, 1917, the Secretary of the Interior made the following administrative ruling:

Sections 2306 and 2307, Revised Statutes, provide as follows:

"SEC. 2306. Every person entitled, under the provisions of section twenty-three hundred and four, to enter a homestead who may have heretofore entered, under the homestead laws, a quantity of land less than one hundred and sixty acres, shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres.

"SEC. 2307. In case of the death of any person who would be entitled to a homestead under the provisions of section two thousand three hundred and four, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children, by a guardian duly appointed and officially accredited at the Department of the Interior, shall be entitled to all the benefits enumerated in this chapter, subject to all the provisions as to settlement and improvement therein contained; but if such person died during his term of enlistment, the whole term of his enlistment shall be deducted from the time heretofore required to perfect the title."

The soldier's additional right thus created inures, first of all, to the soldier, to be exercised by him personally by entry of additional land, or, on authority deduced from *Webster v. Luther* (163 U. S., 331), which involved the exercise of the additional right by a soldier's widow, based on *her own original entry*, by sale and assignment to another, whereby in that manner he acquires the personal benefit intended by Congress.

Section 2307 provides for the devolution of this right if not exercised by the soldier in his lifetime. It is a distinct grant of the right or a similar right, first, to the widow under certain conditions, then to the minor children, acting through a guardian duly appointed and accredited at the Department of the Interior. The grant may be properly described as a grant of power, the exercise of which is essential to the creation of a tangible property right. Congress has expressly designated the parties who may exercise that power. The grant contains no words of inheritance, and the terms of the sections imply that the ordinary law of descent and distribution is inapplicable. Like the grant of a right of a pension to a soldier or to his widow, or to his minor children under sixteen, the privilege is personal and is not descendible.

The Land Department has not, since the decision in *Webster v. Luther*, given a construction to the law that confines the benefit of these sections to the parties expressly enumerated. It has assumed that upon the failure of all of the beneficiaries to appropriate the right, the right passed by descent to others. It has held that where the widow and the minor orphan children failed to avail themselves of the right left unexercised by the soldier, the right reverted to the latter's estate and became an

asset thereof. More lately it has held that this is not so; that the right passes by devolution to the minor children and stops there, becoming an asset of their estate, subject to administration and to sale by an administrator. Soldiers' additional rights have been sold by administrators expressly appointed for that purpose, and at the instance of parties whose business it is to speculate in the rights. This has happened even where the soldier, or the minor child, left no heirs, the theory of the application for administration being that the State had an interest by escheat. Administrators have sold these rights to the party active in procuring administration for relatively trivial sums, no one but the assignee deriving any substantial benefit.

The department is convinced that it was never in the mind of Congress that these rights should pass beyond the limits indicated in the sections. Out of gratitude to the soldier, Congress desired to confer upon him personally a material benefit; or if he died before gaining that benefit, upon those *dependent upon him*—his widow or his *minor* orphan children; not upon his adult children, not upon collateral heirs, and certainly not, in the absence of any heir, upon some State or foreign Government.

Overruling then all decisions or expressions in decisions in so far as they may be in conflict herewith, the department construes the act to mean that the soldier's additional right may be used (1) by the soldier in his lifetime either directly by entering the land or indirectly, in his lifetime, by conveying his right to entry to an assignee; or (2), similarly, by the widow, while her status as widow of the soldier continued; or (3), similarly, in the absence of appropriation by the soldier or his widow, by the minor orphan children, during their minority, acting through their lawful guardian. If this right is not exercised in the manner indicated and within the term during which it was appropriable, the right lapses and ceases to exist. Unused, it never becomes an asset of the estate of the soldier, widow, or child.

Mindful, however, that encouraged by a practice for some time not in harmony with this construction, many persons have in good faith and for a valuable consideration purchased such rights from administrators or heirs, so that some might advance the claim that the practice now to be terminated has become as to innocent purchasers practically a rule of property on which they relied, the construction hereby placed upon sections 2306 and 2307 will not in operation be treated as retroactive—that is, where the right was actually sold and the transaction wholly completed and formally consummated by actual delivery of the written assignment prior to the date hereof.

The Commissioner of the General Land Office, and the officers who are under him, are instructed that no soldier's additional right assigned by the heirs generally or by the administrator of the estate of a deceased soldier or of his widow, or of his minor orphan children, or directly by such "minor children" after they shall have reached majority, thus assigned after the date hereof, will be recognized as the valid basis of entry of public land.

Very respectfully,

CLAY TALLMAN, *Commissioner.*